

## **BIS Training Module 3**

### **Slide 1:**

Thank you for joining Module 3 of the Bureau of Industry and Security's Slide Presentation Series on Commerce Export License Requirements. In Module 3 of this Series, we will cover the 10 General Prohibitions including prohibited end-users, end-uses and activities.

### **Slide 2:**

We will first review the General Prohibitions 1 through 3 which relate to items on the Commerce Control List.

We will then review the remaining prohibitions which are focused on the end-user, the end-use and other activities.

We will also discuss useful definitions when considering these prohibitions.

### **Slide 3:**

Part 736 of the EAR lists the 10 General Prohibitions. These prohibitions describe certain exports, reexports, and other conduct that are prohibited, without a license, license exception or determination that no license is required.

The General Prohibitions summarize your obligations under the EAR and cross reference other parts of the EAR that further define their scope.

When we consider the General Prohibitions, we look at Prohibitions 1, 2 and 3 together as they are limited by the parameters specified on the Commerce Control List and Country Chart.

General Prohibitions 4 through 10 are prohibitions on certain activities that are not allowed without authorization from BIS. They are end-user, end-use and conduct focused requirements and apply to all items subject to the EAR, including EAR99 items.

**Slide 4:**

When determining your license requirements in the flow chart, you first consider whether the item is classified by an ECCN on the Commerce Control List.

**Slide 5:**

If your item is classified under an ECCN on the Commerce Control List, General Prohibitions 1 through 3 may apply.

**Slide 6:**

General Prohibition 1 relates to exports and reexports of items on the Commerce Control List. If there is an “X” in the box on the Country Chart for the reason for control of your ECCN to the destination, you must apply for a license unless a license exception is available. You may recall that this concept was covered in detail in Module 2.

General Prohibition 2 relates to reexports and exports from abroad of foreign-made items incorporating more than a certain amount of controlled U.S. content. If controlled U.S. content of a foreign-origin item exceeds certain levels, a license may be required.

General Prohibition 3 relates to reexports and exports from abroad of foreign produced direct product of U.S. technology and software which may require a license to certain destinations.

If you have a transaction involving General Prohibitions 2 or 3, please review our “Guidance on Reexports and other Offshore Transactions Involving U.S.-Origin Items” which is available on the BIS website and also as a brochure.

**Slide 7:**

Now, let’s take a closer look at the remaining prohibitions. These prohibitions create a license requirement based on the end-user, end-use or other activity.

**Slide 8:**

Regardless of whether or not your item has an ECCN or is EAR99, General Prohibitions 4 through 10 must be considered before proceeding with your export transaction.

**Slide 9:**

Here is a summary of General Prohibitions 4-10. We will begin our discussion with General Prohibition 5 – exports and reexports to prohibited end-users and end-uses. Then we will discuss General Prohibition 7 which relates to U.S. person support of proliferation activities.

We will then discuss Denial Orders under General Prohibition 4 and Embargoes under General Prohibition 6.

Then we will take a look at the remaining prohibitions.

**Slide 10:**

Under General Prohibition 5, you may not knowingly export or reexport without a license any item subject to the EAR to an end-user or end-use that is prohibited by Part 744 of the EAR. These end-user and end-use restrictions are based on U.S. foreign policy and nonproliferation concerns.

**Slide 11:**

Under General Prohibition 5, a transaction that does not normally require a license may require a license based on the exporter's knowledge of the end-use or end-user. It's important to note that "Knowledge" under the EAR goes beyond "positive knowledge". It includes an awareness of a high probability that circumstances exist or will occur in the future.

**Slide 12:**

Part 744 of the EAR contains end-user and end-use controls based on U.S. nonproliferation policies related to nuclear, missile technology, and chemical and biological weapons in countries of concern, or in some cases, worldwide. The controls may impact a group of countries of concern. In other cases, the controls are worldwide.

These controls are intended to ensure that proposed transactions to end-users and end-uses which raise proliferation concerns are reviewed by BIS. License applications for such transactions may or may not be approved depending on the review policy. The designated sections of Part 744 describe in detail the license requirements for these types of end-users and end-uses.

BIS may also inform the exporter that a license is required for any item subject to the EAR when there is an unacceptable risk of use in or diversion to any of the specified activities.

**Slide 13:**

One way BIS informs the public about proliferation end-users of concern is through the Entity List.

The List includes entities whose activities impose a risk of diverting items to programs related to weapons of mass destruction. It also includes certain entities sanctioned by the State Department.

If a party to a transaction is on the Entity List, a license may be required. The Entity list specifies what license requirements may apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the regulations.

**Slide 14:**

Other knowledge based licensing requirements include certain items destined for a military end-use in China, microprocessors for military end-users and end-uses in certain countries, certain maritime propulsion uses, foreign vessels or aircraft, certain sanctioned entities and specially designated nationals.

With respect to specially designated nationals, BIS maintains restrictions on exports and reexports of certain Treasury Department designated persons – specifically Specially Designated Global Terrorists, Specially Designated Terrorists and the Foreign Terrorist Organizations.

**Slide 15:**

General Prohibition 7 prohibits U.S. persons from engaging in exports, reexports or transfers to, or in any country, of any item where a U.S. person knows that such items will be used in specified proliferation activities.

General Prohibition 7 also prohibits U.S. persons from engaging in certain activities, such as financing, contracting, service, support transportation, freight forwarding or employment that will assist in specified proliferation activities.

Keep in mind that such exports, reexports and activities extend to services as well as foreign origin items. The item does not have to be subject to the EAR for these restrictions to apply to the U.S. person.

**Slide 16:**

When we talk about a U.S. person in this context, we mean:

-Any individual who is a citizen of the United States, a permanent resident alien of the United States or a protected individual;

-Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

-Any person in the United States.

**Slide 17:**

General Prohibition 4 relates to Denied Persons.

The Denied Persons List is a listing of parties that have been denied export privileges based on a denial order. Any dealings with a party on this list that would violate the terms of its denial order is a violation of the EAR. This includes dealing with a denied party in a transaction involving items subject to the EAR.

**Slide 18:**

BIS's Know Your Customer and Red Flag guidance helps you identify and avoid situations that might violate the EAR.

Abnormal circumstances indicating that the export may be destined for an inappropriate end-use, end-user, or destination are referred to as "red flags." Examples of a red flag are an order for items which are inconsistent with the needs of the purchaser or a customer declining installation and testing when included in the sales price.

**Slide 19:**

When red flags are raised, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination. However, absent red flags (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise “go behind” the customer’s representations. It’s important not to cut off the flow of information that comes to your firm in the normal course of business. This could be regarded as “self blinding”. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user and ultimate country of destination for the product your firm is seeking to sell.

**Slide 20:**

The Unverified List is a list of parties where BIS has been unable to verify the end-use and/or end-user in prior transactions. The presence of a party on this list in a transaction is a “red flag” which should be resolved before proceeding with the transaction.

**Slide 21:**

General Prohibition 6 prohibits exports and reexports without a license to a country that is embargoed or otherwise sanctioned by the United States. The specific licensing requirements and policies to these countries under the regulations are found in Parts 746 and 742 of the EAR.

**Slide 22:**

Cuba, Iran and Sudan are subject to comprehensive embargoes, meaning virtually all exports require a license to these destinations.

Syria and North Korea are sanctioned and most exports require a license with limited exceptions relating to food and medicine.

Rwanda and Iraq are subject to limited arms embargoes that create license requirements for certain items, such as military parachutes, which are found on the CCL.

It's important to be aware of the fact that the embargo and sanctions policy for each destination is different. In some instances, both BIS and Treasury Department's Office of Foreign Assets Control (also referred to as OFAC), share jurisdiction for administering the embargo or sanction.

Licenses may be approved to these destinations under limited circumstances.

**Slide 23:**

OFAC administers and enforces economic and trade sanctions against targeted foreign countries. OFAC regulations may apply in addition to BIS regulations requiring export licenses for various transactions. The result can mean that in some situations an exporter or reexporter must obtain authorization from both agencies before proceeding with the transaction. With that in mind, this slide summarizes which agency or agencies you need to consult before shipping to certain embargoed and sanctioned countries. If you are involved in a transaction involving one of these countries, you should consult the EAR to determine your obligations under the EAR as well as review possible requirements under OFAC.

**Slide 24:**

We will now turn to the remaining General Prohibitions – 8, 9 and 10. General Prohibition 8 prohibits in transit items from being unloaded or shipped to certain countries without a License or License Exception or unless the item does not require a license to these countries. This general prohibition primarily affects shippers and operators of vessels or aircraft.

**Slide 25:**

General Prohibition 9 relates to orders, terms and conditions applicable to an export transaction. You may not violate a term, order or condition under the EAR. Terms and conditions are frequently contained in licenses and license exceptions.

Certain General and Administrative orders may be found in Part 736 of the EAR. For example, General Order 2 implements the sanctions related to exports and reexports to Syria.

**Slide 26:**

Under General Prohibition 10, you may not proceed with a transaction with knowledge that a violation has occurred or is about to occur or is intended to occur in connection with an item subject to the EAR.

This general prohibition is very broad. It relates to exports, reexports, as well as activities such as transferring, financing, ordering, transporting, and forwarding. It relates to any item that is subject to the EAR. It relates to the Export Administration Act, any order, license, license exception, or other authorization.

**Slide 27:**

In Module 3, we discussed a number of lists which may apply to your transaction or activities. Some of these lists are maintained by BIS and others by other Federal agencies, BIS provides links to these various lists from its homepage under the link “Lists to Check”.

We also offer an email notification service for updates to those lists maintained by BIS. You may sign up for the notification service from the BIS homepage.

**Slide 28:**

In Module 3, we took a closer look at the General Prohibitions in the EAR. We considered General Prohibitions 1 through 3 which relate to items on the Commerce Control List. We then focused on General Prohibitions 4 through 10 which relate to end-user, end-use and other activities. We also reviewed useful definitions when considering these prohibitions.

**Slide 29:**

In Module Four, we will go into more detail on using license exceptions.